W. R. AND MARGARET W. COLLIER

IBLA 78-488 Decided January 24, 1979

Appeal from decision of California State Office, BLM, declaring one placer and five lode mining claims null and void ab initio. CA MC 1486-1491.

Affirmed.

1. Mining Claims: Location--Mining Claims: Withdrawn Land

   A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception and confers no rights on the locator.

2. Estoppel--Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Jeffrey Blackman, Esq., counsel for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

W. R. and Margaret Collier appeal three decisions of the California State Office, Bureau of Land Management (BLM), dated May 12, 1978, declaring one placer and five lode mining claims null and void ab initio.

The Lady #1 and #2 lode mining claims were located by appellants on February 10, 1975; the Lady #3 lode mining claim was located on February 28, 1975; the Lady #4 lode and the El Oro placer mining claims were located on March 24, 1975; and the Ricardo lode mining claim was located on April 21, 1975. Notices of the various locations were received at BLM on March 17, 1977. Each of the subject mining claims is situated in sec. 5, T. 3 N., R. 26 E., San Bernardino meridian, California.

By decision dated May 12, 1978, the subject claims were declared null and void ab initio on the ground that said claims were situated on land withdrawn from entry under a second form withdrawal by Secretarial Order dated July 2, 1902, and under a first form withdrawal by Secretarial Order of June 4, 1930, respectively. These orders were in furtherance of section 3 of the Act of June 17, 1902, 32 Stat. 338; 43 U.S.C. § 416 (1970), 1/ enacted for the purpose of construction of irrigation works for reclamation of arid lands in the western states.

In the statement of reasons for appeal, appellants aver that they went to great lengths to ascertain the true status of the subject lands. They contend that on several occasions BLM officials advised appellants that the land was open to mineral entry, and that appellants were entitled to, and did in fact, rely on that advice.

The record before us includes photocopies of the Secretarial Orders. In addition, we have reviewed the official Historical Index for T. 3 N., R. 26 E. Our study of these documents demonstrates that the entire township was temporarily withdrawn under a second form withdrawal by the Order of July 2, 1902, for inclusion in a reclamation project. Thereafter, the entire township was withdrawn under a first form withdrawal for inclusion in the Colorado River Storage Project, by an Order dated June 4, 1930. The first form withdrawal has never been revoked as regards section 5. Thus, section 5 has not been opened to mineral entry and location since 1930, and the decision of the local land office must be affirmed. Cf. M. G. Johnson, 2 IBLA 106, 78 I.D. 107 (1971).

[1] A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception and confers no rights on the locator. Floyd G. Brown, 35 IBLA 110 (1978); Ray L. Virg-in, 33 IBLA 354 (1978); Rod Knight, 30 IBLA 224 (1977); Charles R. Nielson, 30 IBLA 235 (1977); W. A. Todd, 28 IBLA 180 (1976).

[2] Appellants have requested that this Board set aside the decision declaring the subject claims null and void, or in the alternative, that we "Order the Bureau of Land Management to reimburse [them]

1/ Section 704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2792; 43 U.S.C.A. § 1700 et seq. (Supp. 1978), repealed the language preceding the first proviso of section 3 of the Act of June 17, 1902, 43 U.S.C. § 416 (1970). The effect of this was to authorize withdrawals by the Secretary of the Interior only in accordance with the provisions and limitations of section 204 of FLPMA, 43 U.S.C.A. § 1714 (Supp. 1978). Withdrawals made prior to the Act, however, remain in force. 43 U.S.C.A. § 1714(1)(1) (Supp. 1978).

for * * * expenses, which would never have been incurred had the Bureau not given [appellants] improper information in 1975." For the reasons above set forth, the decision is affirmed. With regard to the alternative relief requested, even assuming, arguendo, that appellants were misled, there is no basis for liability upon which reimbursement of expenses or any other damages can be predicated and authorized by this Board. Cf. 28 U.S.C. §§ 2671-2680 (1970), and 43 CFR Part 22. See 43 CFR 1810.3. That regulation states:

> Effect of laches; authority to bind government.
>
> (a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.
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> (b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.
>
> (c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

The reason for this rule is easily discerned. Thus, it has long been recognized that the Department of the Interior administers the public land of the United States in trust for all of its citizens. If, through the unauthorized actions of an individual employee, rights not granted by law could be acquired in public lands, the rights of the general populace would be thereby denigrated. In order to protect these general rights, courts have consistently held that the Government cannot be estopped by unauthorized actions or advice of its employees to require full compliance with the applicable laws and the regulations adopted pursuant thereto. See, e.g., Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591-92 (10th Cir. 1970).

Appellants allege that they were advised, to their detriment, that the lands herein were open to mineral location. Appellants did not, however, attempt to personally examine the official public land title and status records. Had they done so, they would have been able to ascertain for themselves that the land was not open to mineral location. They cannot now be heard to complain of the advice received, when they did not attempt to corroborate the information obtained through a review of the official records. See Estate of Malcom N. McKinnon, 31 IBLA 290 (1977); Mark Systems, Inc., 5 IBLA 257

(1972). Accordingly, we deny appellants' request for reimbursement of expenses.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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Frederick Fishman
Administrative Judge